

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

**Addendum to the Final Statement of Reasons for Rulemaking, Including Summary of
Comments and Agency Response, for Amendments to the Certification Procedures for All
Aftermarket Parts and Conversion Systems for Off-Road Vehicles, Engines, and
Equipment**

Public Hearing Date: **November 19, 1998**
Agenda Item No.: **98-13-3**

I. BACKGROUND

On October 1, 1999, the Air Resources Board (Board) submitted a Final Regulation Order adopting sections 2470 through 2476, Title 13, California Code of Regulations (CCR), and amending sections 2405 and 2425, Title 13, CCR, to the Office of Administrative Law (OAL) for review, OAL File No. 99-1001-04. OAL disapproved the Final Regulation Order on November 16, 1999.

To address the concerns noted by OAL, the Board modified several provisions of the regulatory text and associated test procedures, and provided public notice of the second set of modifications to the regulatory text in Mail Out MSC#00-02. The Board received one letter during the second comment period.

After Mail Out MSC #00-02 was issued, the Board determined that due to staff oversight, the second 15-day notice had been issued with draft, not the final version of the proposed regulatory text. Staff also realized that several definitions had been modified by recent changes should be reflected to avoid confusion in this rulemaking action. Staff also determined that several minor corrections needed to be made to the associated procedures. Finally, Resolution 98-56 was revised to reflect the Board's clear intention to delegate authority to the Executive Officer to adopt the regulations, after making modifications to the regulation available for public comment, and after considering such comments. These discrepancies were corrected, and the new text and resolution was made available for public comment. The Board received no letters during the third comment period.

This addendum and the other documents in the resubmittal filing supplement the Board's file for the rulemaking denominated as OAL File No. 99-1001-04. To address OAL's comments in its November 23, 1999 Decision Re Disapproval of a Rulemaking Action, the Board addresses each of OAL's cited concerns, and also explains how the proposed regulations and associated test procedures were amended so that they would apply to the off-road large spark-ignition engine and spark-ignition marine engine categories. This addendum also provides a revised summary of the comments received for this rulemaking action and provides responses to the revised summary.

II. SUPPLEMENTAL STATEMENT OF REASONS

A. Inclusion of Off-road Large Spark-Ignition Engine and Spark-Ignition Marine Engine Categories

After the Board approved this rulemaking action at its November 19, 1998 hearing, it adopted, and OAL approved, regulations establishing emission standards and test procedures for two additional categories of off-road sources; off-road large spark-ignition engines (Title 13, CCR sections 2430 to 2439; approved on October 19, 1999) and spark-ignition marine engines (Title 13, CCR sections 2440 to 2448; approved on December 8, 1999).

Because the proposed regulations are intended to apply to all regulated categories of off-road vehicles, engines, and equipment, the regulatory text and associated test procedures were modified so that they would apply to these two off-road source categories. The specific modifications are explained in detail in the second notice of public availability of modified text, Mail Out MSC# 00-02. These changes make it clear that the exemption procedure are available for all classes of off-road sources regulated by the Board.

B. Response to Concerns Noted by OAL in its Decision Re Disapproval of Rulemaking Action

1. Underline/strikeout and underlying text errors discussed during telephone conversation of 11/15/99

As stated on page 10 of OAL's Decision Re Disapproval of a Rulemaking Action, Michael McNamer, Senior Counsel for OAL, discussed several underline/strikeout and textual errors in the proposed regulations with Alex Wang, Staff Counsel for the Board. Each issue and its resolution is outlined below:

§ 2405 Defects Warranty Requirements for 1995 and Later Small Off-Road Engines

Issue: The word "use" in the second sentence of section (c)(10) should not be underlined.

Resolution: The underlining has been removed.

§ 2425 Defects Warranty Requirements for 1996 and Later Heavy-Duty Off-Road Diesel Cycle Engines

Issue: The word "use" in the second sentence of section (c)(10) should not be underlined.

Resolution: The underlining has been removed.

§ 2471 Definitions

Issue: The original definition of “marine vessel” made reference to 1 U.S.C. 3 (1992). OAL questioned whether the definition should be modified to explicitly incorporate by reference 1 U.S.C. 3 (1992).

Resolution: Since the November 19, 1998 hearing, the Board adopted, and OAL approved, regulations establishing emission standards and test procedures for spark-ignition marine engines (Title 13, CCR sections 2440 to 2448). Therefore, the Board modified the definition of marine watercraft in the proposed regulations to be consistent with the definition in Title 13, CCR section 2441, which does not contain a reference to 1 U.S.C. 3 (1992).

Issue: The original definition of “nonroad engine or off-road engine” lacked a closing quotation mark after the word “engine” and an opening quote before the word “off.”

Resolution: The definition of “nonroad engine or off-road engine” has been shortened to the term “off-road engine.”

Issue: The original definitions “nonroad engine or off-road engine,” “nonroad equipment,” and “nonroad vehicle” made reference to 40 CFR 89.2. OAL stated that if the Board intended that these definitions incorporate by reference 40 CFR 89.2, the definitions should be modified to specify the date of adoption or amendment of 40 CFR 89.2.

Resolution: The definitions of “nonroad equipment” and “nonroad vehicle” have been deleted. The definition of “nonroad engine or off-road engine” has been modified to “off-road engine,” and the reference to 40 CFR 89.2 has been removed.

Issue: The definition of “small off-road engines” or “lawn and garden and utility engines” contained a citation to Title 13, CCR, section 2401(18). OAL questioned the accuracy of the citation.

Resolution: The above definition was modified to “small off-road engines” to be consistent with the March 23, 1999 amended definition in Title 13, CCR section 2401(a)(35). The modified definition contains no citation to Title 13, CCR.

§ 2474 Add-On Parts and Modified Parts

Issue: OAL indicated that paragraph (e) was missing language needed to incorporate by reference the “Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories.”

Resolution: The words “which is hereby incorporated by reference herein,” were added to paragraph (e), to explicitly incorporate by reference the “Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories,” adopted July 14, 2000.

Issue: OAL indicated that paragraph (h)(1) was missing language needed to incorporate by reference the “California Evaluation Procedures for New Aftermarket Non-Original Equipment Catalytic Converters for Off-Road Vehicles, Engines, and Equipment,” adopted October 1, 1999.

Resolution: The words “which is hereby incorporated by reference herein,” were added to paragraph (h)(1) to explicitly incorporate by reference the “California Evaluation Procedures for New Aftermarket Non-Original Equipment Catalytic Converters for Off-Road Vehicles, Engines, and Equipment,” adopted October 1, 1999.

Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories

Appendix C – Exhaust Emission Standards and Test Procedures; Off-Road Diesel Engines and Equipment (greater than or equal to 50 hp but less than 175 hp).

Issue: OAL questioned the existence of Title 40, CFR section 89.112-96(a)(4).

Resolution: Staff verified that this section exists (see Title 40, CFR Section 89.112-96(a)(4) adopted June 17, 1994).

California Evaluation Procedures for New Aftermarket Non-Original Equipment Catalytic Converters for Off-Road Vehicles, Engines, and Equipment

IV.B.3 – Off-Road vehicles/engines/equipment certified under optional averaging, banking, and trading provisions.

Issue: OAL stated the word “be” was missing between the words “shall” and “the.”

Resolution: This error was corrected.

2. The rulemaking record does not demonstrate that the Board delegated to the Executive Officer the responsibility to adopt these regulations

OAL states Resolution 98-56 does not contain language delegating authority from the Board to the Executive Officer to adopt the regulations after making modifications to the regulations available for public comment, and after considering such comments. The Board acknowledges that due to a clerical error, the text of Resolution 98-56 did not include this language. However, the Board clearly intended to delegate this authority, as evidenced by the fact that the Board was informed during the public hearing that staff was considering

modifications to the proposed regulations which would require making such modifications available for a 15-day comment period. (*See* the November 19, 1998 public hearing transcript, 98:23 to 100:9, 101:17-20, and 128:15 to 129:10). Also, one witness at the hearing recognized that staff's proposals would require the issuance of a 15-day notice.

"I want to thank [ARB staff] for incorporating a lot of those concerns, not only into the final staff report *but also to the 15-day notice that was just read*, and I appreciate that.

So what I am going to do is limit my comments three other issues that I would like to see incorporated as part of the *15-day notice*. (*Id.* at 116:20 to 117:1. Emphasis supplied. *See also* 118:8-9)

Moreover, the Board's Chairperson explicitly state that the record for this rulemaking action would be reopened when the 15-day notice was issued.

"[T]he record will be reopened when the 15-day Notice of public availability is issued.

Written or oral comments received after this hearing date but before the 15-day notice is issued will not be accepted as part of the official record on this Agenda Item. When the record is reopened for a 15-day comment period, the public may submit written comments on the proposed changes which will be considered and responded to in a final Statement of Reasons for the regulations." (*Id.* at 129:14-23).

This testimony demonstrates that the Board intended to delegate to the Executive Officer its authority to adopt the regulations after making modifications to the regulations available for industry was aware that the modifications would be forthcoming in a 15-day notice. The Board's delegation is also in conformance with its practice of consistently delegating such authority to the Executive Officer over the past twenty-five years. Therefore, Resolution 98-56 has been revised to more accurately reflect the Board's intent by adding language explicitly delegating authority from the Board to the Executive Officer to adopt the proposed regulations and conforming modification, after making the modifications available for public comment and after considering such comments. The revised text of Resolution 98-56, which corrects the clerical error, was transmitted in the third notice of public availability of modified text (Mail-Out MSC # 00-08).

3. The procedure on conversion of off-road vehicles to use alternative fuels is not set out in, or incorporated by reference into a regulation

Title 13, CCR section 2474 of the proposed regulation was amended to incorporate by reference the "California Certification and Installation Procedures for Systems Designed to Convert Off-Road Vehicles, Engines, and Equipment to Use Alternative Fuels," adopted July 14, 2000. *See* § 2474 (j)(1) and (2).

4. Provisions on the engine compartment label and the product information label that were originally made available for public comment were changed without making the changes available for public comment.

The Board concedes that substantial changes to the text of the proposed regulation, as identified by OAL in its decision to disapprove the rulemaking, were made without first making the changes available for public comment. Subsequent to OAL's decision, the Board modified the text of section 10(e), Appendix A to "Procedures for Exemption of Add-on and Modified Parts for Off-Road Categories," adopted July 14, 2000. These changes were made available for a 15-day public comment period via Mail Out MSC# 00-02.

5. A number of provisions are unclear:

(1) The criteria for evaluating performance and driveability for off-road aftermarket parts are not included in the regulation

Section IV.C of the "Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories," adopted July 14, 2000, establishes a standard for evaluating an add-on or modified part's effect on a vehicle, engine, or equipment's driveability or performance. OAL states that the Board's failure to include the criteria for evaluating performance and driveability effects either in Section IV.C, the proposed regulations, or the other procedures incorporated by reference by the proposed regulations violates the clarity standard of Govt. C section 11349.1. OAL indicates it based its decision in part on the Board's response to a comment, wherein the Board stated, "[i]t is anticipated that staff will initially base their evaluations using the criteria they currently use in evaluating performance and driveability for on-road aftermarket parts...."

In the second notice of public availability of modified text, the Board's staff explained that it provided this response because it was under the impression that the performance and driveability criteria existed in a publically available document. However, when additional investigation revealed that staff was incorrect as to this belief, staff modified section IV.C by adding language to clarify that the executive officer will use good engineering judgment to conduct the evaluation.

The Board believes that as modified, section IV.C. of the "Procedures for Exemption of Add-On and Modified Parts for Off-Road Vehicles/Engines/Equipment," adopted July 14, 2000, satisfies the clarity standard of Govt. C section 11349.1, and is sufficiently responsive to the comment regarding the evaluation criteria [Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response, p.13, response 19]. "Good engineering judgment" is a term that is generally understood by persons and entities involved in the manufacture, sale, and installation of aftermarket parts as a judgment guided by the exercise of common assumptions, theories, and principles from the field of knowledge associated with engineering. Moreover, the ARB has previously used this term in its aftermarket parts regulations for on-road vehicles, so the aftermarket parts industry has had ample opportunity to ascertain and work with this definition.

“The Executive Officer shall review the applicant’s emission test data and the Air Resources Board test results, if any, to determine if the add-on or modified part increases emissions. In the absence of any emissions test data, the Executive Officer shall use *good engineering judgment* and the results of any bench, functional, emission test results from similar parts, or Compliance Criteria, if applicable, in making the determination regarding the effect of the add-on or modified part on emissions.” Section IV.A, “Procedures for Exemption of Add-on and Modified Parts,” amended June 1, 1990. (Incorporated by reference by Title 13, CCR, section 2222(c); emphasis supplied).

Additionally, section IV.C., as modified, states that the Executive Officer’s evaluation of an add-on or modified part’s effect on an off-road vehicle, engine, or equipment’s driveability or performance will not be subjective, since it will be guided by the use of good engineering judgment. This modification, along with the definition of “driveability” added to section 2471(a)(9) by the second set of amendments announced in the second notice of public availability of modified text, should resolve any concerns regarding the non-existence or the vagueness of the subject criteria.

(2) The provisions on labeling requirements in the procedure for exemption of add-on and modified parts for off-road vehicles are confusing.

The Board concurs with OAL that as originally proposed, the provisions regarding labeling requirements in Section VII.B and Appendix A of the “Procedures for Exemption of Add-on and Modified Parts for Off-Road Categories,” adopted July 14, 2000, utilized three separate terms (“product information label”, “identification plate or label”, and “engine compartment plate or label,”) to refer to the same label.

The Board’s staff intended for the labeling requirements of the proposed regulations to clearly specify that if the installation of an add-on or modified part required certain specified modifications to an original equipment manufacturer’s emission control system, the aftermarket part manufacturer would have to provide two labels with identical content. One label would be installed on or near the add-on or modified part, and the other label would be installed adjacent to the original equipment manufacturer’s tune-up label. To clarify this intent and to eliminate the confusion resulting from the usage of three separate terms to refer to the same label, staff clarified these provisions in the second notice of public availability of modified text by only using the term “product information label,” and by adding text to clarify that if the installation of an add-on or modified part requires certain specified modifications to an original equipment manufacturer’s emission control system, the aftermarket manufacturer must provide two identical labels.

(3) Regulation section 2427 [2473] does not specify that a manufacturer may determine the form in which records regarding replacement parts may be maintained.

Section 2473(b) of the proposed regulations requires manufacturers of replacement parts to maintain records substantiating compliance of such parts with the regulations. OAL notes that the Board responded to a comment regarding storage of these records in electronic format by

stating that the proposed regulations afford manufacturers such flexibility, then states that the text of the regulation does not specify that a manufacturer may determine the form for maintaining records. In addition, OAL states that the Board's response does not comply with the response requirements of Govt C section 11346.9 because it does not explain how the regulation has been modified in response to the comment or state a reason for making no change to the regulation.

The Board addressed OAL's concerns by adding language to section 2473(b) that explicitly states a replacement part manufacturer may determine the format (including electronic or computer readable media) for storing and maintaining records, provided the format allows the records to be readily retrieved and displayed to the executive officer. The Board's explanation for making the change was transmitted in the second notice of public availability of modified text via Mail Out MSC # 00-02.

(4) The regulatory effect of the list of components in the appendix to the procedure which are examples of emission-related parts is unclear.

Appendix B to the "Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories," adopted July 14, 2000, lists a number of components from on-road vehicles that are examples of emissions-related parts, as defined by Title 13, CCR section 1900(b). Each of OAL's stated concerns regarding this Appendix have been addressed. First, text explaining the contents and purpose of Appendix B was inadvertently placed in section III.D of the Procedures (regarding categorization of add-on and modified parts into generic categories). Because the concept of emissions-related parts is not directly relevant to the concept of generic categories of add-on or modified parts, staff deleted the reference to Appendix B in section III.D of the Procedures.

Second, Appendix B's most recent amendment date was changed from June 1, 1990 to May 19, 1981, for consistency with the date specified in Title 13, CCR section 1900(b)(3).

Finally, OAL references the Board's response to a comment regarding Appendix B to support its determination that the regulatory effect of Appendix B is unclear. After examining the specific comment, "[w]hile the generic categories listed in this section [section III.D of the 'Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories,' adopted July 20, 2000] are acceptable, the components list provided in Appendix B is too extensive," it appears that the commentor misunderstood the relationship between the concepts of "generic categories" and "emissions-related components" based on the misplacement of text discussed above. To avoid future misunderstandings, and to further clarify the regulatory effect of Appendix B, staff: (1) deleted the reference to Appendix B in section III.D of the Procedures, as previously discussed, and (2) added language to Section I of the Procedures to further emphasize that Appendix B only provides examples of emission-related parts for on-road vehicles.

“These criteria apply to add-on or modified parts that are emission-related, as defined in Sections 1900(b), (1) and (10), Chapter 3, Title 13, California Code of Regulations (CCR). *Examples of emission related parts for on-road vehicles are shown in Appendix B of these procedures.*”

(Section I, “Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories,” adopted July 14, 2000, as modified by second 15-day public comment period, Mail Out MSC # 00-02). (Emphasis supplied).

These two changes clearly specify that *Appendix B has no regulatory effect*, but is included in the proposed regulations only to provide examples of emission-related parts for on-road vehicles. The Board anticipates that aftermarket part manufacturers for off-road vehicles, engines, and equipment would be able to obtain guidance from Appendix B as to whether a particular off-road aftermarket part would require an exemption from the proposed regulation by analogizing that parts to its on-road equivalent, then checking if that on-road equivalent part is listed in Appendix B to the Procedures.

6. The Board has not prepared an estimate of the costs that the Board may incur as the result of adopting these regulations.

OAL’s first basis for disapproving this rulemaking action is its determination that the Board did not estimate the costs it will incur in enforcing and administering the proposed regulation, that it is “apparent” the Board will incur such costs in “evaluating applications for approval of add-on and modified parts,” and that the Board’s failure to estimate these costs violates Govt C section 11349.1(d)(1). OAL also states the Board failed to obtain the Department of Finance Program Manager’s signature on the STD.399 form, as required by State Administrative Manual (SAM) section 6660 if a rulemaking agency projects state costs or savings.

Even if the Board were to account for the administrative costs identified by OAL, such costs would be negligible and absorbable within the existing Board division budget. The Board would not hire additional staff, but would utilize existing staff to administer the off-road aftermarket parts program. Any incremental costs attributable to the review of off-road aftermarket part applications would most likely be minimal and absorbable within the budget for the Board’s on-road aftermarket parts section. This reasoning is bolstered by considering that the proposed regulations established an optional certification program. Also, off-road aftermarket parts are currently prohibited by existing law, and it is likely that only minimal numbers of application will be submitted during the time periods including the current and two subsequent fiscal years.

Also, the Board believes that costs incurred to implement this regulation are distinct from costs required for the Board to comply with regulation. The soundness of the Board’s interpretation is supported by considering the consequences resulting from the adoption of a contrary interpretation. Assuming, *arguendo*, that implementation costs are costs necessarily incurred by issuing agencies to reasonably comply with proposed regulations, it follows that

issuing agencies would *always* incur costs from each and every proposed regulation. Issuing agencies necessarily incur costs to implement regulations, such as costs related to processing application, advising staff or the public of new requirements, publishing pamphlets, etc. Therefore, under this alternative interpretation, every proposed regulation would result in fiscal impacts on state agencies. However, it is also apparent that issuing agencies must distinguish between implementation and compliance-related costs to complete the fiscal impact statement (FIS) in form STD.399. Specifically, agencies must estimate the potential costs of a proposed regulation in FIS section B.1, and must indicate if no costs are estimate in section B.3. of FIS. But, as just discussed under the alternative interpretation, every proposed regulation would result in fiscal impact, and it would be meaningless to include section B.3 in the FIS section of form STD.399. This inconsistency between form STD.399 and the alternative interpretation suggests the correctness of the Board's position.

The Board's position follow from its long standing practice, which has not been questions by OAL for over ten years, to not consider costs related to implementation of regulations as costs necessarily incurred to comply with those regulations. The Board has therefore consistently not accounted for such costs in its fiscal impact statements.

Govt C section 11346.5(a)(6) requires state agencies to prepare, in accordance with instructions adopted by the DOF, an estimate of the cost or savings to any state agency resulting from the adoption of a proposed regulation. "Cost or savings" are defined as "*additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.*" *Ibid.* (Emphasis supplied).

The procedures prescribed by the Department of Finance (DOF) for estimating the costs referenced in Govt C section 11346.5(a)(6) are set forth in SAM sections 6601 through 6680. Significantly, DOF's definitions of "costs," "direct costs," "indirect costs," or "reasonable compliance" in SAM section 6610 do not explicitly mention or discuss expenses associated with an issuing agency's administration of proposed regulations.

Moreover, language explaining DOF's definition of "reasonable compliance" implies that costs incurred in reasonable compliance with a proposed regulation do not include an issuing agency's costs related to implementing that regulation.

For example, if an agency is *required by regulation* to provide transportation for certain persons

Since "*compliance*" *connotes that the regulation involves a requirement*, costs incurred by state or local agencies *in exercising any authority* granted by a regulation which is permissive or optional are not germane and need not be estimated. SAM section 6610 (emphasis supplied).

This language suggests that costs incurred by an agency to reasonably comply with a regulation are limited to those costs directly attributable to an agency's efforts to comply with that regulation. For example, this rulemaking action would establish an optional program to certify aftermarket parts for off-road vehicles, engines, and equipment. An agency wishing to

produce and sell these types of parts would incur compliance-related costs such as costs related to obtaining test data, maintaining records, and submitting applications. The Board's costs related to evaluating the submitted application are not directly related to the efforts of the other agency in obtaining a certification, and should not be considered as a compliance-related cost.

Finally, as documented in the rulemaking record, the Board has estimated the cost or savings it would incur from the proposed regulation, in accordance with applicable instructions from the Department of Finance. Section B.3 of the Fiscal Impact Statement (Rulemaking record, tab 6) indicates that the Board estimates "[n]o fiscal impact exists because this regulation does not affect any State agency or program." The Board wishes to emphasize that an estimate of no fiscal impacts on State agencies is distinguishable from a failure to estimate fiscal impacts, as required by Govt C section 11346.5(a)(6). The Board was therefore not required to obtain the DOF Program Manager's signature on the STD.399 form because the Board did not project any state costs or savings for this rulemaking action.

III. SUMMARY OF, AND RESPONSES TO COMMENTS

The Board received one letter from the Specialty Equipment Market Association (SEMA) during the comment period of the second 15-day notice, but only one comment was addressed to a point within the scope of the changes made in the second 15-day notice.

Comment: SEMA is concerned that the proposed regulation lacks "objective driveability evaluation criteria" for "the reasons previously provided." These reasons are contained in its letter providing comments to the first notice of public availability of modified text; and are stated in the Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response, p.22, comment 11.

"If CARB must pursue this requirement, it must reduce the subjective nature of it. At a minimum, objective driveability and performance criteria such as that used by vehicle manufacturers must be used to evaluate these parameters. The vehicle manufacturers have extensively detailed test regimes to establish a driveability index and performance index for each of their vehicles. CARB should use similar methods in their assessments."

Response: ARB disagrees with SEMA's comment that the proposed regulation lacks objective driveability evaluation. As discussed in detail in the second notice of public availability of modified text (Mail Out MSC# 00-02, p.5), and in section II.B.5.(1) of this Addendum to the Final Statement of Reasons for Rulemaking, the Board acknowledged the need to include objective driveability and performance criteria in the proposed regulation. The Board therefore addressed SEMA's concern by adding the definition of "driveability" in Title 13, California Code of Regulations section 2471, and also modified section IV.C of the "Procedures for Exemption of Add-On and Modified Parts for Off-Road Vehicles/Engines/Equipment," adopted October 1, 1999, by adding language to clarify that the executive officer will use good engineering judgment to conduct the evaluation.

The Board believes these modifications adequately specify the objective criteria for evaluating driveability. “Good engineering judgment” is a term that is generally understood by persons and entities involved in the manufacture, sale, and installation of aftermarket parts as a judgment guided by the exercise of common assumptions, theories, and principles from the field of knowledge associated with engineering. Moreover, the ARB has previously used this term in its aftermarket parts regulations for on-road vehicles, so the aftermarket parts industry has had ample opportunity to understand and to work with this definition. In addition, the definition of driveability specifies criteria used to identify poor driveability.

IV. COMMENTS BEYOND THE SCOPE OF MODIFICATIONS

None of the remaining comments in SEMA’s letter were within the scope of the modifications to the text in the notice. That is, they were not directed at issues raised by the proposed modified text.

V. SIGNATORIES TO WRITTEN COMMENTS – SECOND 15-DAY MODIFICATIONS

Specialty Equipment Market Association, signed by Stephen B. McDonald and Frank Bohanan.